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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 BARBARA BROWN and CINDY HIETT, *et al.*,
9 on behalf of themselves and a putative class,

No. C 14-1449 SI
Related Cases C 12-5109 SI and C 13-3016 SI

10 Plaintiffs,

v.

11 MHN GOVERNMENT SERVICES, INC.;
12 HEALTH NET, INC.; and MHN SERVICES
13 d/b/a MHN SERVICES CORPORATION, a
Washington corporation,

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY CASE PENDING
APPEAL AND DENYING
ALTERNATIVE MOTION TO DISMISS
AND MOTION TO COMPEL, WITHOUT
PREJUDICE TO RENEWAL AFTER
STAY IS LIFTED**

14 Defendants.
15 _____/

16 Defendants' motion to stay proceedings, defendants' motion to compel arbitration, and
17 defendants' alternative motion to dismiss are scheduled for a hearing on June 6, 2014. Pursuant to Civil
18 Local Rule 7-1(b), the Court determines that these matters are appropriate for resolution without oral
19 argument. For the reasons set forth below, the Court GRANTS defendants' motion to stay proceedings
20 and DENIES the motions to compel and to dismiss, without prejudice to renewal after the stay is lifted.

21 **BACKGROUND**

22 This case is one of three related collective and/or class actions brought by plaintiffs against
23 defendants MHN Government Services, Inc. and Managed Health Network, Inc. (collectively "MHN").
24 The other lawsuits are *Zaborowski v. MHN Government Services, Inc.*, C 12-5109 SI, and *Hiett v. MHN*
25 *Government Services, Inc.*, C 13-3016 SI. This case was originally filed in Washington state court on
26 June 14, 2011, removed and remanded several times, and eventually removed and transferred to this
27 Court on March 28, 2014. *Hiett* was originally filed in Washington federal court on May 15, 2012, and
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1 transferred to this Court on July 1, 2013. *Zaborowski* was originally filed in this Court on October 2,
2 2012. Health Net, Inc. is named as a defendant in this lawsuit and in *Hiett*, but not in *Zaborowski*.
3 *Zaborowski* and *Hiett* were related in an order filed September 9, 2013, and the three cases were related
4 in an order filed April 8, 2014.

5 In all three cases, plaintiffs were employed by MHN as Military Family Life Consultants
6 (“MFLCs” or “MFL Consultants”), and they allege that they were misclassified as independent
7 contractors. This case is brought by plaintiffs Barbara Brown and Cindy Hiett on behalf of a class of
8 all persons who worked as MFLCs in Washington state at any time from June 14, 2008 through the entry
9 of judgment in this case. The complaint seeks unpaid wages under Washington law and statutory
10 penalties under California Labor Code § 226.8. *Hiett* is brought by plaintiffs Barbara Brown, Cindy
11 Hiett, and several other individuals, and is brought as a nationwide collective action under the Fair
12 Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), and also seeks statutory penalties under California
13 Labor Code § 226.8. Docket No. 1 in C 13-3016 SI. *Zaborowski* is brought by different plaintiffs, and
14 is also brought as a nationwide collective action under the FLSA, as well as class actions under
15 California, Hawaii, Kentucky, Nevada, New Mexico, New York, and North Carolina law. *Zaborowski*
16 also seeks statutory penalties under California Labor Code § 226.8. The FLSA collective classes in
17 *Zaborowski* and *Hiett* overlap.

18 Plaintiffs in all three cases signed the same arbitration agreement. While this case was pending
19 in Washington state court, the plaintiffs moved to quash the arbitration agreement and the Washington
20 Superior Court granted the motion. On August 15, 2013, the Washington Supreme Court affirmed the
21 Superior Court’s order. On September 12, 2012, plaintiffs mailed a state court-approved notice to the
22 putative *Brown* class members. Docket No. 38-1 ¶ 3 & Ex. A. The notice informed putative class
23 members about this litigation, explained that attorneys from either side may contact them, and informed
24 class members that they did not need to speak to counsel if they did not want to.

25 In an order filed April 3, 2013, this Court denied defendants’ motion to compel arbitration in the
26 *Zaborowski* case, and defendants filed a notice of appeal of the arbitration order on April 8, 2013.
27 Docket Nos. 68 & 71 in C 12-5109 SI. On April 25, 2013, the Court granted the *Zaborowski* plaintiffs’
28 motion for conditional certification of the FLSA collective action. Docket No. 80 in C 12-5109 SI. The

1 *Zaborowski* plaintiffs have not yet moved to certify the state law Rule 23 subclasses. On July 3, 2013,
2 pursuant to a stipulation of the *Zaborowski* and *Hiatt* parties, this Court (1) ordered that *Zaborowski*
3 and *Hiatt* be deemed related once *Hiatt* was transferred from the Western District of Washington to this
4 District; (2) conditionally certified the FLSA collective action in *Hiatt*, and (3) ordered that the notice
5 materials to the conditionally-certified FLSA class in *Zaborowski* also be distributed to the
6 conditionally-certified FLSA class in *Hiatt*. Docket Nos. 102 & 103 in C 12-5109 SI.

7 In order an filed May 1, 2013, the Court stayed *Zaborowski* pending defendants' appeal of the
8 April 3, 2013 order denying arbitration. Docket No. 84 in C 12-5109 SI. In staying *Zaborowski*, the
9 Court found, *inter alia*, that (1) the appeal "presents a legitimate, substantial question as to the
10 applicability of the FAA to California law"; if MHN proceeded to trial, it would "face substantial costs
11 of defending it, which would affect the cost-limiting purpose of arbitration"; (3) plaintiffs would "not
12 suffer substantial harm from a stay of the case"; and (4) judicial resources will be wasted if this case
13 proceeds all the way to trial, only for the Court to later discover that the case should have proceeded
14 through arbitration." *Id.* at 3-5. On November 5, 2013, pursuant to a stipulation of the *Hiatt* parties, the
15 Court stayed that case pending resolution of the appeal in *Zaborowski*. Docket No. 104 in C 13-3016
16 SI.

17 On September 13, 2013, the *Zaborowski* plaintiffs moved to dismiss the appeal on the ground
18 that the Washington Supreme Court's August 15, 2013 decision holding the arbitration agreement
19 unenforceable constitutes a "final judgment on the merits" that should be given preclusive effect in
20 *Zaborowski*. Docket No. 19 at (I) in Ninth Circuit Case No. 13-15671. The *Zaborowski* plaintiffs
21 argued, *inter alia*, that *Zaborowski* "is one of three substantially similar class and collective actions,"
22 that "at issue in all three cases is the enforceability of MHN's arbitration clause," and that the
23 *Zaborowski* appeal "involves an identical issue to that decided in *Brown*, as MHN has acknowledged."
24 *Id.* On March 18, 2014, the Ninth Circuit denied the motion to dismiss without prejudice to the
25 *Zaborowski* plaintiffs renewing the collateral estoppel arguments in their answering brief. The
26 *Zaborowski* plaintiffs renewed those arguments in the answering brief filed on April 17, 2014. Docket
27 No. 28 at 43-51, Ninth Circuit Case No. 13-15671. MHN filed the reply brief on May 30, 2014. Docket
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No. 34, Ninth Circuit Case No. 13-15671.¹

Now before the Court are three motions filed by defendants: (1) a motion to stay proceedings in this case until the resolution of the *Zaborowski* appeal; (2) a motion to compel arbitration; and (3) an alternative motion to dismiss and strike. Defense counsel state that they asked plaintiffs to stipulate to a stay and plaintiffs declined. Docket No. 38-1 ¶ 2. Defendants assert that “[b]ecause the issues presented in MHNGS’s Motion to Compel Arbitration are virtually identical to the issues presently on appeal before the Ninth Circuit in *Zaborowski*, perhaps the simplest option would be for the Court to stay all proceedings, including a decision on the Motion to Compel, until the *Zaborowski* appeal runs its course.” Docket No. 38 at 3:5-8.

DISCUSSION

A stay pending appeal is “‘an exercise of judicial discretion,’ and ‘[t]he propriety of its issue is dependent upon the circumstances of the particular case.’” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. U.S.*, 272 U.S. 658, 672-73 (1926)). The party requesting a stay bears the burden of showing that the case’s circumstances justify favorable exercise of that discretion. *Nken*, 556 U.S. at 433-34. To determine whether the moving party has met its burden, the Ninth Circuit adheres to a four-factor test: (1) whether the party has made a strong showing it is likely to succeed on the merits; (2) whether it will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties in the proceeding; and (4) where the public’s interest lies. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011); *Nken*, 556 U.S. at 434.

Defendants contend that the Court should stay this case pending resolution of the *Zaborowski* appeal because the three related cases involve the same disputed arbitration clause and are brought on behalf of similar and overlapping classes, and thus that it makes sense to litigate the cases together. Defendants argue that this case is in the same procedural posture as *Zaborowski* and *Hiatt*, and that it should be stayed for the same reasons that the Court articulated in its May 1, 2013 order staying *Zaborowski*.

¹ The docket shows that there are overlapping counsel in *Zaborowski* and *Brown*.

1 Plaintiffs contend that a stay is inappropriate because the Ninth Circuit’s ruling in *Zaborowski*
2 will not impact this case. Plaintiffs argue that even if the Ninth Circuit reverses in *Zaborowski* and
3 compels arbitration in that case (which plaintiffs assert is unlikely), this case must proceed to trial
4 because this Court is bound by the Washington Supreme Court’s decision pursuant to the *Rooker-*
5 *Feldman* doctrine and the Full Faith and Credit Act, 28 U.S.C. § 1738. Plaintiffs argue that “[t]he only
6 court that could have overturned [the Washington Supreme Court] decision – the U.S. Supreme Court
7 under *Rooker-Feldman* – lost jurisdiction to do so many months ago when MHN failed to seek a writ
8 of certiorari. *Rooker-Feldman* notwithstanding, under the Full Faith and Credit Act (‘FFCA’), federal
9 courts must also give the decisions of a state supreme court the same preclusive effect as the decision
10 would have within the state.” Docket No. 50 at 9:11-17.

11 The Court concludes that a stay of proceedings is warranted. The Court disagrees with plaintiffs
12 that the Ninth Circuit’s disposition of the *Zaborowski* appeal will not affect this case. Plaintiffs
13 themselves have represented to the Ninth Circuit that the *Zaborowski* appeal “involves an identical issue
14 to that decided in *Brown*,” and that the Washington Supreme Court’s decision should be given
15 preclusive effect in *Zaborowski*. There is no dispute that the three cases involve the identical arbitration
16 agreement, similar or overlapping claims, and similar or overlapping classes. The unusual procedural
17 posture of this case, and the two related (and virtually identical) cases pending before this Court,
18 distinguish this case from the *Rooker-Feldman* cases cited by plaintiffs. In the *Rooker-Feldman* cases,
19 a party lost in state court and then filed a case in federal court requesting the federal court to reverse the
20 state court decision. In those cases, the courts held that the *Rooker-Feldman* doctrine “prevents federal
21 courts from second-guessing state court decisions by barring the lower federal courts from hearing *de*
22 *facto* appeals from state-court judgments.” *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)
23 (internal quotation marks omitted).

24 Here, in contrast, the Washington Supreme Court issued an interlocutory decision in this case
25 prior to removal to this Court. This Court is not acting as a *de facto* appellate court, and there is no
26 dispute that this Court has jurisdiction over this case. Plaintiffs have not cited any authority for the
27 proposition that the *Rooker-Feldman* doctrine precludes a federal court from revisiting an interlocutory
28 state court decision – even one issued by a state supreme court – when that case is subsequently

1 removed to federal court. Similarly, plaintiffs' reliance on case law interpreting the Full Faith and
2 Credit Act is unavailing. The Full Faith and Credit Act "requires a federal district court to give the
3 same—not more and not less—preclusive effect to a state court judgment as that judgment would have
4 in the state courts of the state in which it was rendered." *Noel v. Hall*, 341 F.3d 1148, 1160 (9th Cir.
5 2003). Here, what is at issue is an interlocutory decision issued by a state court prior to removal, not
6 a final state court judgment.

7 The Court concludes that a stay pending resolution of the *Zaborowski* appeal is necessary to
8 ensure judicial efficiency and to preserve the parties' time and resources. Defendants are correct that
9 allowing this litigation to proceed would effectively lift the stays in *Zaborowski* and *Hiett*, and plaintiffs
10 have not proposed any way that litigation could proceed in this case independently of the two stayed
11 cases. While allowing this case to proceed would harm defendants, a stay does not harm plaintiffs. The
12 *Brown* class members have received the state court notice regarding this litigation. Plaintiffs also do
13 not dispute defendants' assertion that due to significant overlap between this case, *Zaborowski* and
14 *Hiett*, most of the putative class members in this case also received the FLSA collective action notices
15 that were sent in the two related cases. Thus, the putative class members have been informed about this
16 lawsuit and plaintiffs' counsel have had, and continue to have, the opportunity to communicate with
17 them.

18 19 CONCLUSION

20 For the foregoing reasons, the Court GRANTS defendants' motion to stay the case pending
21 appeal of the Arbitration Order. The Court DENIES defendants' motion to dismiss and motion to
22 compel arbitration, without prejudice to renewal after the stay is lifted. This resolves Docket Nos. 38,
23 39 & 40.

24 **IT IS SO ORDERED.**

25
26 Dated: June 3, 2014



SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE